

APPENDIX A:

**COURT DOCUMENTS
AND PRE-SCOPING
MEETING**



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MEMORANDUM

DATE: January 24, 2000
TO: Attendees (distribution / attendee list attached)
FROM: Tom Twedt, BIO/WEST, Inc.
SUBJECT: Meeting Minutes - Provo Canyon SEIS Prescoping Meeting

A court stipulated "Prescoping Meeting" relative to the Provo Canyon Highway Project was held at the UDOT Region 3 Office in Orem on January 13, 2000. An agenda and attendee list were distributed at the meeting.

1. Welcome / Introductions: Tom Twedt, BIO/WEST

Tom opened the meeting and welcomed those in attendance. All introduced themselves and indicated their affiliation.

2. Project Overview / History: Randy Hunter, UDOT Risk Management

Randy very briefly reviewed the background of the Provo Canyon Highway Project. He noted that Phase 2 of the project was nearly completed and that a third phase was being initiated. The guiding environmental documentation has been the Supplemental Environmental Impact Statement (SEIS) completed in 1989, and an environmental re-evaluation had been completed for the third phase, Wildwood to Deer Creek State Park, in 1995. In subsequent court action, UDOT had agreed to prepare a new SEIS for any additional portions of the project and has contracted with BIO/WEST to do so.

Randy also noted that the Phase 2 contractor had been removed from the job and several items still required completion. Partially as a result of this project, UDOT has developed an substantially different approach to environmentally sensitive projects. Projects of this type in the future will include contract specifications that require the construction contractor to have an environmental specialist / inspector on the project who will be responsible for all environmental activities and impacts and will keep a log of all his activities. Failure to do so will be taken very seriously by UDOT. Randy also noted that this process was followed for the Snowbasin Road project with very good success.

3. Current Project: Dan Nelson, UDOT Region 3 Project Manager

Dan reported that three items remain to be completed from the previous projects: 1) landscaping / revegetation is complete except for one more year of "establishment" watering on non-river side; 2) the Corps of Engineers has determined that Phase 2 revegetation along the

river is 70% successful and has released UDOT from that permit requirement, and the wetland mitigation area on the Bullock property has been constructed and planted and will be monitored for 3-5 years for success; and 3) some aspects of median treatment in the lower canyon and slope stability in the Phase 2 area remain to be completed. All of these items are currently being addressed independently of this project.

The Department intends to move ahead with the next project, and this SEIS is the first step in that effort. This effort will include a review of all aspects of the project and all existing or new issues. It will review the extensive geotechnical data collected and analyzed previously, as well as considering additional data collected since then.

Bill Gedris, FHWA, asked if the intent was to use the haul road as the final alignment of the new project. Dan replied that they would look closely at what was determined in the re-evaluation, but that UDOT was leaning towards using the haul road and abandoning the existing highway along that section of the river.

4. Environmental Process: Tom Twedt, BIO/WEST

Tom reported that BIO/WEST has been contracted to prepare a draft SEIS for the entire project, with emphasis on the Wildwood to Deer Creek State Park portion that had been addressed previously in the re-evaluation. At this time, the proposed action is expected to be the final set of alternatives selected during the re-evaluation, which would leave the existing alignment and traverse through the Canyon Meadows area on the existing "haul road" and cross the Deer Creek Dam on a new, buttressed face.

An extensive public involvement program will be initiated in the immediate future and will include the following: public and media notice of the proposed project, a series of newsletters beginning with the first issue in February, a public Open House scoping meeting in March, and a project location on the UDOT Internet website with continual updates of current information and input opportunities.

A project advisory team made up of appropriate agencies, interested organizations, and the general public will be formed over the next month or so. This team, tentatively titled the Cooperating Advisory Team (CAT), will be modeled after the very successful one utilized on the Logan Canyon Highway Project. Team members will be expected to be representative of certain interests and to report to and receive input from those interests. The team will include about 10-12 members and meet approximately monthly to be briefed as to the progress and direction of the project and offer input. The first project newsletter will provide further details as to the team.

Randy Hunter noted that the Logan Canyon CAT was formally appointed by the Transportation Commission, and wondered whether this would be the case here. Tom commented that the Record of Decision (ROD) for the Logan Canyon Project included a Memorandum of Understanding formalizing the team as well as a variety of other items, and would probably not be necessary for this project.

Paul Dremann of Trout Unlimited wondered if the CAT would be provided weekly inspection reports and offered tours of the project area as was done for the Snowbasin Project. Tom responded that no weekly reports would be generated since this would not yet be a construction project, but that all information generated during the project would be provided to the CAT, and site visits could be arranged at any time as appropriate.

The current schedule for the project calls for the completion of a draft SEIS in December of this year, at which time the Department will decide when and how to proceed further. Dan commented that construction timing will depend upon how much of the existing (re-evaluation) design can be used, but that construction was likely 2-3 years away. UDOT does not presently have funding available to complete the entire project, thus the construction may be phased and the schedule will be very dependent upon funding from the legislature. Tom added that this environmental study has been funded, but that no construction money is yet available. No price tag other than that provided in the re-evaluation is yet available, but UDOT is in the process of putting the project in their funding plan.

Steve Schmidt of the Provo River Coalition asked at what level of detail the SEIS will look at the area from Deer Creek State Park to Heber. Tom noted that since no additional design details beyond those of a conceptual level in the previous SEIS would be available, no additional analysis would be performed.

Mark Beutler of the Bureau of Reclamation (BOR) noted that the BOR preferred that the highway be placed on the face of the dam rather than remain on the top, and that this would allow the dam to be upgraded in the process. The upgraded dam will require a new spillway (in the same location), but will not result in any change of flows.

Tom commented that the BOR would be a cooperating agency for the project, not a co-sponsor; and that no BOR funding would be involved. There had been some discussion that the BOR might use this document and then prepare their own ROD to accompany it, but this has not yet been finalized. Tom and Dan will begin coordination with the BOR in the immediate future.

In terms of the project components, Dan commented that the re-evaluation included a detailed value engineering study that reviewed a wide variety of possible alternative alignments and selected the set to be addressed in this project. He also added that several access issues, the Salt Lake Aqueduct access in particular, will have to be addressed in this project.

Randy noted that the document will address invasive species issues as a new mandate from the federal government. Bill Gedris commented that the project will have to utilize the current noxious weed and invasive species lists. Julie Mack wondered if the project could address the eradication of several noxious weed species in the canyon. Randy responded that this was more of a maintenance issue, but could be looked at in conjunction with Ira Bickford of UDOT Maintenance. Bill also noted that the new Section 106 regulations now in effect will require more detailed coordination with several Native American tribes during the project.

Tom also mentioned as general information that the Mountainland Association of Governments (MAG) had out a request for proposal to prepare a Provo Canyon Scenic Byway and

Watershed Management Plan. A consultant was to be selected within the next few days, and coordination between the projects may be appropriate.

5. Issue Input: Attendees

a. Fisheries - Paul Dremann wondered if there would be any possibility of taking steps towards oxygenating the river below the dam as a part of this project. Jeff Appel, a concerned citizen, asked if there would be any funding available to do enhancements in the area relative to the dam and the Provo River fishery. Jeff also asked about the success of improving fish passage into Little Deer Creek, and Tom reported that considerable movement into the stream has been observed and spawning appears to be occurring.

b. Project Scope - Jeff noted that this effort should include an opportunity to review the entire project during the process. He suggested there is a need to look into impacts of the project on 800 North and the Utah Valley area traffic in general and to consider if the project simply provide a shortcut between I-80 and I-15.

c. Landslides - Julie Mack of the North Fork Preservation Alliance noted her concern as to the stability of the recent landslide area at the interphase of Phases 2 and 3, and questioned if that area can handle the cut / widening required for two more lanes of traffic. Randy commented that three separate slide areas have been identified in the project area: the Hoover Slide (a large active and constant slide area above the highway), the "Blue Mud" Slide, and the more recent rock slide; and each will have to be addressed by the project. Dan noted that another slide area near Canyon Glen, which is outside of the project area, has also been of some concern by the Water Conservancy District. They are now considering relocating the Olmstead flowing off the slide area to another site in the canyon.

Jeff suggested that the geotechnical report and data be carefully reviewed and voiced his concern about simply relying on an old study. He noted his concern that landslide knowledge in the area may not be adequate, and that this project should insure that everything is current and accurate. Dan replied that Tom Lee from Parsons has remained involved in the overall project and may be available to verify data and pull together new information as necessary. Julie again reiterated her concern that four lanes may not fit in portions of this area and asked that the project take a hard look at this issue. Jeff also noted that the scoping process for this project should re-evaluate these issues.

d. Mitigation Follow-up - Lars Anderson, UDOT Region 3 Landscape Architect, raised a few questions about some of the mitigation features installed or planned for the previous phases. He wondered if there was any feedback as to the fence installed along the revegetated areas to manage access. Steve Schmidt and others noted that some fishermen were causing damage and would be hard to control. Lars commented that fence maintenance has been turned over to the Utah Division of Wildlife Resources (DWR).

Lars also noted that he must provide a report to the Utah Department of Environmental Quality relative to what has/will be done with the money (fine) from UDOT. Randy reported that the Nature Conservancy is responsible for appropriately utilizing the money and that he would be meeting with them soon to finalize this issue. Julie also responded that she understood the

Nature Conservancy was close to finalizing an agreement to purchase land and easements (approx. 10 acres?) at one of the campgrounds below the damsite. The easement would probably be held by DWR and any remaining money would be used to develop restroom facilities.

6. Closing Comments

Tom suggested that any concerns, etc. relative to the discussions at this meeting be submitted in writing, as they tend to carry more weight in that form and allow appropriate evaluation and action.

Dan reiterated that Tom would be the contact for BIO/WEST and that he would serve that role for UDOT.

7. Adjournment

The meeting was adjourned at approximately noon.

cc: Attendees: Steve Alder, Attorney General's Office
Tom Allen, FHWA
Lars Anderson, UDOT Region 3
Jeffrey Appel
Mark Beutler, Bureau of Reclamation
Paul Dremann, Trout Unlimited
Bill Gedris, FHWA
Randy Hunter, UDOT Risk Management
Julie Mack, North Fork Preservation Alliance
Angie Nelson, BIO/WEST
Dan Nelson, UDOT Region 3
Steve Schmidt, Provo Coalition



5/17/96

FILED
DISTRICT COURT

-7 MAY 96 PM 4:01

DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

PROVO RIVER COALITION, THE
STONEFLY SOCIETY OF THE WASATCH;
HIGH COUNTRY FLYFISHERS; THE
UTAH RIVERS CONSERVATION
COUNCIL; ZACHARY FRANKEL; BRENT
FEULNER; STEVE SCHMIDT; STIRLING
ADAMS; and GARY BRYNER,

Plaintiffs,

vs.

FEDERICO F. PENA, Secretary,
Department of Transportation; RODNEY E.
SLATER, Administrator, Federal Highway
Administration; MICHAEL G. RITCHIE,
Division Administrator of the Federal
Highway Administration; and THOMAS
R. WARNE, Executive Director, Utah
Department of Transportation,

Defendants.

MEMORANDUM DECISION
AND ORDER

Civil No. 2:96-CV-186C

On February 29, 1996, plaintiffs filed this suit to challenge various actions taken by the Federal Highway Administration (FHWA) and the Utah Department of Transportation (UDOT) in planning and constructing a highway project in the Provo Canyon. The complaint alleges violations of the National Environmental Policy Act (NEPA), the Clean Air Act (CAA), and the Intermodal Surface Transportation Act (ISTEA). On April 8, 1996, plaintiffs filed a motion for a

temporary restraining order and for a preliminary injunction, seeking to halt construction of this project pending completion of a supplemental environmental impact statement. At a hearing held on April 10, 1996, the court denied plaintiffs' request for a temporary restraining order. A hearing on plaintiffs' motion for a preliminary injunction was held over several days from April 17, 1996, through May 3, 1996. Having considered the evidence presented at that hearing, the court denies plaintiffs' motion, and enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The highway project at issue in this case was originally planned as an improvement to two highway segments, Utah Route 52 (800 North in Orem, Utah) and US-189, which were to form a continuous route connecting I-15 in Orem with US 40 in Heber (the project). As originally planned, the project was to expand 800 North from two to four lanes and to improve US-189 through the canyon as a two-lane highway with passing lanes. These proposed improvements were examined in an environmental impact statement (EIS) dated October 20, 1978. The 1978 EIS acknowledged that "traffic demand" may at some point require expansion of the canyon highway to four lanes, but stated that a new EIS would have to be prepared in order to evaluate any such expansion.

2. The planned improvements to 800 North in Orem were completed in 1985. The design for the improvements to US-189 at that time had been expanded to include four lanes. On September 12, 1986, a civil action was filed (Magleby et. al. v. Hurley, et. al., Civil No. 86-C-845W) seeking to enjoin further construction on the project. An injunction was issued to stop the project, and a stipulated Order was entered enjoining further work on the project (with certain exceptions) pending completion of a Supplemental Environmental Impact Statement (SEIS).

3. The SEIS was completed and approved by FHWA and UDOT in November, 1989. The project termini for purposes of the SEIS were the same as for the original EIS: the interchange between 1-80 and 800 North in Orem and the intersection of US 189 and US 40 in Heber. The SEIS examined the environmental impacts of construction of a four-lane highway through the canyon. The SEIS considered several alternatives and proposed a "preferred alignment" for the highway. This preferred alignment was conceptual in nature, lacking detailed design.

4. In a Record of Decision (ROD) dated March 21, 1990, FHWA gave its approval of the proposed construction of the SEIS preferred alignment.

5. For purposes of construction, the project was split into several phases; Phase I is the portion of the highway from the intersection with 800 North at the base of the canyon to Upper Falls. Phase II is the portion of the highway from Upper Falls to the county line just above the intersection of Utah Route 92 at Wildwood. Phase III is the portion of the highway from Wildwood to just beyond the Deer Creek Dam.

6. Since the 1989 SEIS, the following steps have been taken toward completion of the project:

a. Approval for construction of Main Line Bridge over Provo River in Phase I, April 6, 1990. Construction of the bridge was completed on July 30, 1991.

b. Approval for construction of Phase I, May 31, 1991. Phase I was completed November 25, 1994.

c. Approval of contract for final design of Phase II, April 3, 1992.

d. Right-of-way acquisition for a portion of Phase II (\$140,000), June 1993.

e. Right-of-way acquisition for a portion of Phase II (\$480,000), July 1993.

- f. Right-of-way acquisition for a portion of Phase II (\$525,000), January 1994.
 - g. Right-of-way acquisition for a portion of Phase II (\$3,600,000), July 1995.
 - h. Approval for construction of Phase II, September 25, 1995.
 - i. Construction contract for Phase II awarded, January 24, 1996.
7. During final design for Phase II and Phase III, several issues, including new geologic information and roadway geometric considerations, prompted reconsideration of some elements of the preferred alignment identified in the 1989 SEIS. The proposed designs went through several new configurations, and public hearings were held to consider these changes.
8. Proposed changes to the design of Phase II of the project were considered and evaluated in a document entitled "Re-evaluation of U.S. Highway 189 . . . Final Supplemental Impact Statement Covering the Portion from Upper Falls to Wildwood, Utah County, Utah" (Phase II Re-evaluation). Proposed changes to the design of Phase III of the project were considered and evaluated in a document entitled "Re-evaluation of U.S. Highway 189 . . . Final Supplemental Impact Statement Covering the Portion from Wildwood to Deer Creek State Park, Wasatch County, Utah" (Phase III Re-evaluation). These re-evaluations were both approved by FHWA and UDOT on July 14, 1995.
9. In the course of preparing the re-evaluations, the agencies sought input from a variety of government entities and the public. The proposed modifications were circulated to involved and interested state and federal agencies for review and comment. Public notice and opportunity for comment were provided. Public workshops were held, after publication of notice, in Heber City and in Orem in April, 1994. After publication of notice, public hearings were held in Heber on November 15, 1994, and in Orem on November 16, 1994. Newsletters regarding the project

were circulated to those who had expressed an interest in the project.

10. Several new design alternatives were considered for both phases of the project as further study, public input, and budget constraints caused the designers to refine their plans. The design ultimately chosen as the preferred alignment for Phase II differed from the SEIS alignment in several ways, most notably in the redesign of the tunnel arrangement and in the substantially increased use of retaining walls. Due to new information regarding ground stability in the Hoover Slide area, the new alignment of Phase III provided for the new highway to move away from the existing highway along the river, shifting the highway up over the top of the Hoover Slide. In addition, the new Phase III alignment would cross over the top of the Deer Creek Dam instead of crossing the river on a new bridge to be constructed below the dam. The new Phase III alignment also requires that Deer Creek be re-channeled and placed in a culvert under the new highway which will be twice as long as the culvert which now runs beneath the existing highway.

Use of Retaining Walls.

11. Plaintiffs have estimated the length of retaining walls in the SEIS alignment for Phase II at about 1500 feet. However, the SEIS alignment was conceptual in nature, and as the design of the SEIS was refined, it was determined that the SEIS alignment would actually require about 2500 feet of retaining wall. The preferred alignment ultimately chosen in the 1995 Re-evaluation includes plans for 5,685 feet of retaining walls, which is a substantial increase no matter which estimate for the SEIS plan is used.

12. Dr. Sam Rushforth testified on behalf of plaintiffs that this increase in the length of retaining walls might have a significant effect on sedimentation rates and destruction of riparian zones, depending on the distance from the river's edge that the walls are built. However, Dr.

Rushforth did not know specifics regarding the placement of the walls in the construction plans, and acknowledged that the farther from the river the walls are placed, the less significant the adverse effects would be. Dr. Rushforth also expressed concern regarding possible damage to the river due to construction but did not indicate how the risks of such damage would be increased due to the increased length of the walls. The general risks to the river from construction are considered in the 1989 SEIS, and standard mitigation measures are discussed. SEIS, pp. 4-15, 4-16.

13. Defendants presented more specific evidence regarding the placement of the walls. Edward Keane, UDOT's chief geotechnical engineer, testified that he calculated that the total riparian area in Phase II would be increased from the currently existing 3.9 acres to 6.7 acres under the current plan. Mr. Keane testified that the expanded use of retaining walls in Phase II would increase the amount of riparian area between the river and the roadway by lessening the size of the fill area needed to support the roadway. This general principle is discussed in the SEIS: "Every effort will be made during final roadway design to reduce impacts to riparian and emergent marsh habitats. Retaining walls . . . will be used to minimize cut and fill slopes in such habitats along Provo River." p. 4-24.

14. Dr. Rushforth stated that the possible danger to the river from retaining walls arises when a wall is either very close to or actually in the river. However, there is no evidence that the walls as now planned are closer to the river than those included in the SEIS alignment. Mr. Keane testified that the walls will generally be built away from the river, and that at the closest point (station 509+50), the wall will be eight to twelve feet from the riverbank at the ordinary

high water line,¹ which, according to Larry Buss, the UDOT project engineer, would result in 25 to 50 feet of wall being in the river for short periods during periods of very high flow in the river. In general, the current Phase II alignment moves the road through the narrows section of the canyon "between about 20 and 40 feet further into the hillside [than the SEIS alignment] . . . to provide additional clearance between the roadway and the Provo River." Phase II Re-evaluation, p. 12. Mr. Keane testified that the impacts to the river from the current design would be less than those arising out of the SEIS alignment, which allowed for wall construction in the river.

15. The court finds that although the total length of the walls has substantially increased, there has been no evidence to indicate that this design change has increased the risk of environmental harm to the river. Plaintiffs' expert testified that increasing the length of retaining walls in or near the river could have significant effects, but acknowledged that he had no knowledge regarding the placement of walls in the current plans. The only evidence presented on the placement of the walls indicates that the walls will be shifted farther from the river, and that the increased length of the walls will have an overall positive environmental effect, as a result of the increased riparian area, and due to the limited access to these environmentally sensitive areas.²

Waste Disposal Site.

16. The 1989 SEIS did not specify a particular site for placement of excess material excavated in construction, but listed several alternatives and stated that the contractor would be required to comply with all permit requirements and prepare a reclamation plan prior to using any

¹ The ordinary high water line is the spot at which permanent vegetation grows along the riverbank due to the fact that the ground above the line is generally out of the water.

² Mr. Keane testified that 30% of the riparian zone is currently destroyed due to steady pedestrian traffic and automobiles parking off the side of the road.

site. One of the possibilities considered in the SEIS was the Bureau of Reclamation Borrow Pit located at Weeks Bench below Deer Creek Dam. During the design of Phase II, plans were made to dispose of excess fill at the River Bend Trailer Park at the lower end of Phase II, but it was later determined that it would be preferable to place the fill at Weeks Bench, as a large amount would be required in that area to construct Phase III.

17. Plaintiffs allege that the current plans for disposing of excess fill material at the Weeks Bench area is a substantial change to the project which requires a supplemental EIS. However, the 1989 SEIS considered Weeks Bench as a possible disposal site. The environmental effects of using Weeks Bench are briefly addressed there with the observation that Weeks Bench has already been disturbed as a borrow pit for construction of the Deer Creek Dam and remains unvegetated. SEIS, p. 4-2. The environmental consequences of using this, or any other site, are also addressed in the SEIS by the general statement that "[t]he contractor will also be required to prepare and submit evidence of compliance with federal and state environmental law and assurance of compliance with state and local government permits as well as prepare a reclamation plan prior to using any site" as a waste disposal area. *Id.* The implication of this provision is that if the required mitigation measures are taken, there will be no adverse environmental consequences that would require analysis at that stage.

18. The permits required for use of the Weeks Bench area contain detailed mitigation measures that the U.S. Army Corps of Engineers would supervise. In addition, the agreement between UDOT and the Bureau of Reclamation (upon whose land the Weeks Bench site is located) requires that "upon completion of the work, the construction site and any disturbed areas shall be smoothed and graded in a manner to conform to the natural topography of the landscape

and shall be repaired, replanted, reseeded or otherwise restored comparable to original condition." Agreement for Relocation of Highway and Future Exchange of Deeds Between the United States of America and UDOT, Exhibit P at p. 6, ¶12. Dan Fritz of the Bureau of Reclamation testified that the site at Weeks Bench would actually be improved by the proposed action.³

The Haul Road

19. In the 1995 Re-evaluations the agencies determined that a haul road would have to be constructed to move the excess fill up the canyon to Weeks Bench in order to avoid using the existing highway for that purpose. The route for the haul road was planned along the alignment designed for Phase III. Since the haul road was to be constructed within the "footprint" of Phase III, it was thought that it would be immediately improved to a paved highway. The Re-evaluations assumed that the haul road would have no environmental effects other than those considered in the analysis of the Phase III design. Therefore, no additional evaluation was done to analyze the consequences of building the haul road. Phase III Re-evaluation, p. 4-17.

20. At some point, it was determined that Phase III construction would be delayed indefinitely due to funding issues. As a result, the haul road to be constructed along the Phase III alignment will not be improved to a paved highway for several years. In light of the fact that it now appears that construction of Phase III will be delayed indefinitely, the environmental effects of the haul road must be considered independently. Plaintiffs argue that the agencies have failed

³There is a question as to the amount of fill to be disposed at the Weeks Bench site. The SEIS states that the site is capable of accommodating 400,000 cubic yards of material. SEIS, p. 4-2. Larry Buss testified that the total amount of fill material to be moved in Phase II is 588,752 cubic yards, and that 500,000 to 600,000 cubic yards of material would be required in order to construct Phase III as it passes over the Weeks Bench area. In any event, Lee Abramson, a geotechnical engineer working with an agency consultant on the project, testified that the Weeks Bench area would be sufficient for disposal of all excess fill generated in Phase II.

to analyze whether this substantial construction effort would have any significant environmental effects. However, since the haul road is now planned as a temporary structure to aid in Phase II construction, the court must consider the mitigation measures for such construction disturbances considered in the 1989 SEIS (see, e.g., SEIS pp. 4-16, 4-78), and the mitigation plans actually put in place for this structure.

21. Plaintiffs' expert witness, Elliot Lips, a geotechnical engineer, testified that environmental consequences of the haul road have not been considered due to the fact that the road was designed as a temporary structure. He noted the steeper cut slopes, the lower factor of safety, and the failure to consider seismic loading. Mr. Lips also testified concerning erosion effects of leaving the haul road as a permanent structure, since the slope stabilizing measures planned for Phase III would not be implemented for the haul road. All of the adverse effects to the environment cited by plaintiffs assume that the haul road would be left unmitigated. Mr. Lips conceded, however, that he had not examined the mitigation plans for the haul road which had been put into the contract specifications.

22. Larry Buss, the project engineer, testified that there will be an on-site visit by geotechnical engineers after the haul road is no longer in use. This visit will be used to determine what measures will be necessary to permanently reclaim and stabilize the road, including possible laying back or backfilling of the cut slopes, which is one of the mitigation methods identified by Mr. Lips. Detailed plans for mitigation of the haul road have also been incorporated into the contract specifications.

New Legislation

23. Plaintiffs claim that the passage of the Central Utah Project Completion Act

(CUPCA) constitutes a changed circumstance which requires supplementation of the EIS. Dr. Rushforth testified on behalf of plaintiffs that he believes flows in the Provo River would increase as a result of CUPCA. This testimony was confirmed by David Fritz of the Bureau of Reclamation, who stated that CUPCA provided for minimum flows of 85 cfs in order to maintain the fishery, and an increase of minimum flows in the river to 100 cfs in the future. Mr. Fritz also testified, however, that such an increase in flows would not have any significant effect on the project. The court finds that there is no evidence that such an increase of the minimum flows in the river could cause significant environmental effects arising out of this project.

24. Plaintiffs claim that the designation of the Provo-Orem municipal area as nonattainment for ozone and CO and Utah County for PM10 requires a new consideration of air quality issues. The air quality analysis done in connection with the SEIS examined air quality "secondary impacts" on 800 North in Orem and on University Avenue in Provo based on projected increases in vehicle miles traveled into those areas from improvement of the highway from existing condition to two or four lanes. SEIS at 4-64. Plaintiffs have not submitted any evidence of unanticipated changes in the air quality since the SEIS which would show that the analysis of air quality issues in the SEIS is inadequate.

CONCLUSIONS OF LAW

1. Plaintiffs bear the burden in this case of establishing the need for injunctive relief. In making its determination regarding the necessity of the injunction, the court must consider four factors: (a) whether plaintiffs have shown a substantial probability of success on the merits; (b) whether plaintiffs are threatened with irreparable injury in the absence of an injunction; (c) whether plaintiffs' potential injury outweighs any damage to defendants; and (d) whether the

injunction would be adverse to the public interest. Potawatomi Indian Tribe v. Enterprise Management Consultants, Inc., 883 F.2d 886, 888-89 (10th Cir. 1989); Lundgrin v. Claytor, 619 F.2d 61, 63 (10th Cir. 1980). If plaintiffs are able to show that they will suffer irreparable injury and that "the balance of hardships tips decidedly in [their] favor," the requirement of showing a substantial probability of success on the merits is satisfied by raising "questions going to the merits so serious, substantial, difficult and doubtful as to make them a fair ground for litigation and thus for more deliberate inquiry." Lundrin, 619 F.2d at 63 (quoting Continental Oil Co. v. Frontier Refining Co., 338 F.2d 780, 781-82 (10th Cir. 1964)).

Irreparable Injury

2. Early in the hearings on this matter, it became clear that the scope of the issues to be considered for injunctive relief would be limited by the fact that Phase III of this project has been postponed indefinitely, and thus there is no imminent risk of injury to plaintiffs from Phase III construction. In light of this, the evidence was limited to facts relevant to the ongoing construction of Phase II, including the haul road and the fill site at Weeks Bench.

3. Plaintiffs assert that there is irreparable injury due to the continued construction efforts in the canyon, which defendants conceded would involve earth movement and blasting that would be essentially irreversible. The construction also involves removal of substantial amounts of vegetation and the diversion of Deer Creek. Although there is no presumption of irreparable injury, this sort of permanent alteration to the environment of an area such as Provo Canyon is the type which is generally held to be sufficient to constitute irreparable injury for purposes of preliminary injunctive relief. See Amoco Production Co. v. Village of Gambell, 480 U.S. 531, 545 (1987). In view of the ongoing construction, the court finds that plaintiffs will suffer

irreparable injury prior to final resolution of this case. In addition, the alleged violations of NEPA are themselves irreparable since the purpose of NEPA is to ensure that the agency and the public is aware of environmental consequences of a project before construction commences. Sierra Club v. Hodel, 848 F.2d 1068, 1097 (10th Cir. 1988); Sierra Club v. Marsh, 872 F.2d 497, 503-04 (1st Cir. 1989).

Balancing of Harms--Public Interest

4. In this case, the interests of both plaintiffs and defendants coincide with different elements of public interest; plaintiffs are asserting the interest of the public in compliance with NEPA, and defendants assert the public interest in the funds already expended on the project and the funds that would be spent in necessary reclamation of areas already disturbed by construction should an injunction issue. There is also a public interest in the asserted increased safety, efficiency, and environmental protections alleged to be provided by the project. In general, courts have found that the public interest in requiring NEPA compliance prior to a project proceeding is sufficient to justify an injunction. Southern Utah Wilderness Alliance v. Thompson, 811 F.Supp. 635, 641 (D. Utah 1993); Realty Income Trust v. Eckerd, 564 F.2d 447, 456 (D.C. Cir. 1977). However, there is no general presumption that an alleged NEPA violation will in all cases outweigh other public interests. See Fund for Animals, Inc. v. Lujan, 962 F.2d 1391, 1400 (9th Cir. 1992); Concerned Citizens, etc. v. Secretary of Transportation, 641 F.2d 1, 7-8 (1st Cir. 1981); Thompson, 811 F. Supp. at 641.

5. The defendants argue that, in this case, the balance should shift in favor of denial of plaintiffs' motion due to the significant public funds expended thus far in final planning and construction. Defendants have submitted evidence that stopping the project now would cost

\$32,950.00 per day in construction standby costs. The project engineer testified that it would take two months of construction in order to mitigate the effects of construction already done on the project, and that cancellation of the contract would cost from five to ten million dollars. In addition, any delay to the project beyond two weeks will likely postpone completion of the project for four to six months due to winter construction delays.

6. Defendants also argue that the court must consider the important public interests cited in the 1989 SEIS in support of the need for this project, including the unusually high accident rate on the highway as it is currently configured. Defendants contend that any delay to this project presents risks to the public safety due to the inability of the existing highway to accommodate current traffic levels. The SEIS indicates that the project is intended to correct deficiencies in the current highway which result in extremely high accident rate, from 40% to 80% higher than those of comparable roads in Utah. See SEIS, pp. 1-2, 1-3. Defendants also presented testimony citing risks to the Provo River from possible accidents involving trucks carrying hazardous materials. Affidavit of Larry Buss, p. 6.

7. The court also notes that the construction area is already substantially disturbed. The new construction of Phase II generally follows the route of the existing highway, and the proposed haul road runs through an area where roads and a housing subdivision already exist. The proposed fill site at Weeks Bench is located on land that was previously disturbed during construction of Deer Creek Dam, and the testimony indicated that Deer Creek was long ago altered to run outside of its original course. Plaintiffs point to Provo Canyon's natural beauty and resources, including the use of the Provo River for fishing and other recreational activities. On the other hand, defendants have submitted evidence to show that the project is intended in part to

preserve and even to enhance and protect the natural resources that plaintiffs cite. Although the effects of such mitigation efforts in the context of this project are exactly the sort of things that plaintiffs are seeking to verify through NEPA processes, the court may also consider evidence of defendants' mitigation efforts in order to assess the risks of harm, an assessment which is necessary in order to balance the interests at stake here. See Fund for Animals, Inc., 962 F.2d at 1400 ("In cases where the public interest is involved, the district court must also examine whether the public interest favors the plaintiffs.").

8. Having carefully considered all of these factors, the court finds that the harm cited by defendants is outweighed by the potential irreversible harm to the canyon environment and to the public's interest in having agency decision makers consider all the relevant information which NEPA requires. However, this is not a case in which that balance "tips decidedly toward plaintiff." See Potawatomi Indian Tribe, 883 F.2d at 888-89; Thompson, 811 F.Supp. at 641.

Likelihood of Success on the Merits/ Fair Grounds for Litigation

9. Plaintiffs allege that the defendant agencies have violated NEPA and various regulations associated with it. Plaintiffs assert that changes in the surrounding circumstances, changes to the nature of the project, and new information which has been developed since the 1989 SEIS was approved require that the agencies prepare a new supplemental EIS.

Scope of Review

10. The purpose of NEPA is to require agencies to compile and consider all relevant information before taking action which might have significant environmental effects. This is an ongoing duty which does not end when an initial EIS is prepared. Rather, there are circumstances in which an agency will be required to supplement an EIS. The regulations promulgated by the

Council on Environmental Quality (CEQ) provide that supplements must be prepared if there are significant changes made to a project which are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns. 40 C.F.R. § 1502.9. In addition, the FHWA regulations require that the agency supplement an EIS whenever it determines that:

- (1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or
- (2) New information or circumstances relevant to environmental concerns and bearings on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

23 C.F.R. § 771.130(a). However, if the changes to the project or the new information result in a lessening of adverse environmental impacts, without causing other significant environmental impacts, no supplemental EIS will be required. 23 C.F.R. § 771.130(b)(1).

11. The court's review of the agencies' decision that the circumstances did not require a supplemental EIS under these regulations is a limited one. In Marsh v. Oregon Natural Resources Council, 490 U.S. 360 (1988), the Court established the scope of judicial review of an agency decision not to prepare a supplemental EIS. The court held that under the provisions of the Administrative Procedures Act, 5 U.S.C. § 706, a challenge to an agency decision regarding the significance of alleged changes is "a classic example of a factual dispute the resolution of which implicates substantial agency expertise." Marsh, 490 U.S. at 376. "Accordingly, as long as the [agency] decision not to supplement the [1989 SEIS] was not 'arbitrary or capricious,' it should not be set aside." Id. at 377. The court's responsibility in this case is to review the record and satisfy itself that "the agency has made a reasoned decision based on its evaluation of the

significance--or lack of significance--of the new information [or circumstances]." *Id.* at 378.

12. Plaintiffs contend that the court's review of whether the defendants took the required "hard look" at the possible environmental impacts resulting from changes to the project since the SEIS is confined to "the administrative record" existing at the time the decision was made to proceed with Phase II of the project. Plaintiffs claim that all other evidence, including contracts, plans, specifications and all documents which were created after the 1995 Re-evaluations must not be considered by the court. According to plaintiffs, with this evidence defendants "are attempting to justify their actions with post hoc rationalizations and evidence." Plaintiffs' Memorandum in Support, p. 4. The court agrees that its review of the decision to proceed with Phase II of the project must focus on the procedures that were followed until the date of the publication of the 1995 Re-evaluations. However, the contracts, specifications, plans, and other evidence received at the hearing must be considered in order to evaluate the environmental consequences of the project. The environmental analysis of the SEIS and the 1995 Re-evaluations assumed that these measures would be taken, so it is appropriate for the court to examine the details of the mitigation and construction plans in considering whether the consequences of the construction are something other than was assumed at the time of the earlier documents. The court's review of agency actions simply cannot be limited to documents generated in NEPA compliance; the agency's duty is to constantly evaluate their project to consider whether new significant developments have occurred which may have environmental effects. However, it is clear that "an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decisionmaking intractable, always awaiting updated information only to find the new information

outdated by the time a decision is made." Marsh, 490 U.S. at 373.

Status of the 1995 Re-evaluations

13. Plaintiffs challenge the sufficiency of the 1995 Re-evaluations which set out new alignments and plans for Phase II and Phase III, arguing that these documents are insufficient to comply with the agencies' obligations under NEPA and FHWA regulations. 23 C.F.R. § 771.129(b), entitled "Re-evaluations" provides:

A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.

Plaintiffs argue that defendants were required to conduct a formal re-evaluation of the project, and claim the 1995 documents do not fulfill this requirement.⁴ However, the evidence clearly establishes that within three years of the agencies' approval of the SEIS, major steps were taken to advance the project, including actual construction work on Phase I, and approval of final design authority for Phase II.

14. It is true, however, that regardless of the status of the 1995 Re-evaluations as NEPA documents, the agencies are required to constantly evaluate their project to determine whether changes to the circumstances or to the plans are significant enough to require supplementation of

⁴Plaintiffs point to language in the Phase III Re-evaluation which states that "the FHWA has requested that a Re-evaluation of the SEIS be prepared for each remaining segment of [the project]," because there had been "no major steps to advance the action" since the approval of the SEIS. However, the testimony indicated that this statement was drafted by the contractor who prepared the Re-evaluation, and was overlooked in the agencies' review process. There is no evidence that this misstatement was relied on by plaintiffs or the public in any relevant way that "threatened to work serious injustice," nor that it involved "affirmative misconduct" rather than simple oversight, both of which are required to justify a finding of estoppel against the government. See Heckler v. Community Health Services, 467 U.S. 51 (1984).

the EIS. 23 C.F.R. § 771.130(a).

Project Scope

15. Plaintiffs question the scope of the project as outlined in the original 1978 EIS and as considered in the 1989 SEIS. According to plaintiffs, defendants have failed to consider the "true scope" of the project by limiting the project to I-15 to Heber. Because the highway will be connected to US-40 in Heber, which provides a direct connection north to I-80, plaintiffs argue that the project creates a "shortcut" from I-80 to I-15 which bypasses Salt Lake City and which will increase the use of the project by interstate traffic. Plaintiffs point to the 1995 Re-evaluation of Phase III, which acknowledges that this connection to I-80 will create a shortcut, and argue that with the completion of improvements to US-40 making it a four lane highway, increased interstate traffic is inevitable.

16. In order to properly evaluate the environmental consequences of a proposed action, the agency must determine a logical scope for the evaluation. FHWA regulations require that any action evaluated in an EIS shall:

- (1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
- (2) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
- (3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

23 C.F.R. § 771.111(f). Thus, defendants are to evaluate the environmental effects of their actions by considering them within a reasonable context. "Agencies may not evade their responsibilities under NEPA by artificially dividing a major federal action into smaller components, each without 'significant' impact." Coalition on Sensible Transportation, Inc. v.

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U.S. DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PROVO RIVER COALITION; THE
STONEFLY SOCIETY OF THE
WASATCH; HIGH COUNTRY
FLYFISHERS, THE UTAH RIVERS
CONSERVATION COUNCIL; ZACHARY
FRANKEL; BRENT FEULNER; STEVE
SCHMIDT; STIRLING ADAMS; and
GARY BRYNER.

Plaintiffs,

v.

FEDERICO F. PEÑA, Secretary,
Department of Transportation;
RODNEY E. SLATER,
Administrator, Federal
Highway Administration;
MICHAEL G. RITCHIE, Division
Administrator of the Federal
Highway Administration; and
THOMAS R. WARNE, Executive
Director, Utah Department of
Transportation,

Defendants.

ORDER FOR DISMISSAL

Case No. 2:96CV 0186C

Judge Tena Campbell

Based on the parties' Stipulation and the representations of
the Utah Department of Transportation concerning the Department's
commitment to perform a Supplemental Environmental Impact Statement

Dole, 826 F.2d 60, 69 (D.C. Cir. 1987). However, the court's review of the agencies' determination of the proper scope of this project is confined to considering whether the scope of their inquiry is so improperly limited as to be arbitrary or capricious.

17. In this case, the project connects reasonable destinations, and is sufficient in length to consider environmental impacts on a reasonably broad scope. In addition, the project as defined in the EIS and SEIS appears to have independent utility. "The proper question is whether one project will serve a significant purpose even if a second related project is not built." Id. at 69. In this case, the development of US-40 as a four-lane highway connecting the project to I-80 certainly appears to increase the utility of the project, but even if there were no such connection to I-80, this project would have independent utility in providing access to various destinations within Provo Canyon, Heber, Kamas, Jordanelle Reservoir, Park City, and the Uinta Basin. This is a far cry from plaintiffs' characterization of the project as "a road going nowhere."

18. Plaintiffs have made the argument that defendants did not consider the impacts to the project arising out of the connection to I-80, but have presented no evidence as to the significance of any increase in traffic due to the existence of the shortcut, and no evidence as to significance of the environmental effects of such an increase. The 1989 SEIS considered the fact that the improvements to US-189 and its connection to the planned improvements to US-40 in Heber would create an alternate route for interstate traffic. Plaintiffs have not submitted any evidence which would justify a finding that the project's connection to I-80 might have significant environmental effects not already considered in the 1989 SEIS.

Changes in Road Alignment

19. As indicated above, the court finds that the changes to the road alignment made in the

design for Phase II do not constitute such a significant change which would render the agencies' determination that a supplemental EIS is not needed arbitrary or capricious.

Use of Weeks Bench Disposal Site

20. Although the SEIS does not provide details of mitigation efforts to be undertaken at the site, such are not required. The Supreme Court stated in Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 351 (1989) that "[t]o be sure, one important ingredient of an EIS is the discussion of steps that can be taken to mitigate adverse environmental consequences." The Court then recognized that:

There is a fundamental distinction, however, between a requirement that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated, on the one hand, and a substantive requirement that a complete mitigation plan be actually formulated and adopted, on the other it would be inconsistent with NEPA's reliance on procedural mechanisms--as opposed to substantive, result-based standards--to demand the presence of a fully developed plan that will mitigate environmental harm before an agency can act.

Id. at 352-53. Indeed, in Friends of the Payette v. Horseshoe Bend Hydroelectric Co., 988 F.2d 989 (9th Cir. 1993), the court upheld an environmental assessment even where some environmental impacts would inevitably occur, on the basis that "[i]f significant measures are taken to 'mitigate the project's effects,' they need not *completely compensate* for adverse environmental impacts." Id. at 993-94 (quoting Preservation Coalition, Inc. v. Pierce, 667 F.2d 851, 860 (9th Cir. 1982)). The 1989 SEIS contemplates that mitigation efforts will be undertaken with regard to such fill sites, and plaintiffs have not shown that there may be significant environmental effects that have not been accounted for in the mitigation plans.

Construction of the Haul Road

21. Plaintiffs allege that the plan for construction of a haul road to carry excess fill from

Phase II to the disposal site at Weeks Bench is a change to the project that may have substantial environmental effects not considered in the 1989 SEIS, especially in light of the fact that the haul road will be left undeveloped. However, the testimony established that the haul road would be reclaimed and that the possible environmental effects claimed by plaintiffs would be mitigated once the road is no longer used. Plaintiffs' argument that these efforts are insufficient because they are in plans developed after the 1989 SEIS and even subsequent to the approval of the 1995 Re-evaluations misses the mark. Although mitigation and reclamation of this particular haul road could not have been considered in these documents, the possible impacts of road construction in general was certainly foreseen and considered by the agencies in the 1989 SEIS, which incorporated by reference the standard construction mitigation requirements set out in UDOT Standard Specifications. As indicated above, the specifics of the mitigation plans are not required to be set out in a NEPA document, and although the timing of the construction of Phase III has changed since the 1995 Re-evaluations, the effects of that change are considered and accounted for in the later mitigation plans. Plaintiffs have not pointed to any significant environmental effects which might be left unmitigated by the haul road plans.

CAA and ISTEA

22. Since the completion of the SEIS, Congress has enacted the 1990 amendments to the Clean Air Act (CAA) and the Intermodal Surface Transportation Act of 1991 (ISTEA). The regulations adopted in 1993 pursuant to the CAA amendments contain a "grandfather" provision that exempts projects for which the NEPA process has been completed if major steps have been taken within the past three years toward completion of the project. 23 C.F.R. § 51.394(c)(1). The court finds that such major steps have been taken on this project, and that there has been no

significant change in the project's design, concept and scope. See 23 C.F.R. § 51.394(c)(2).

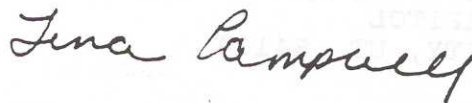
Accordingly, a new conformity determination for this project is not required under these statutes.

23. In light of the above analysis, the court finds that plaintiffs have so far failed to come forward with any evidence of significant environmental effects arising out of the project as currently planned which have not been considered in the SEIS, or which have not been accounted for in the mitigation plans that the SEIS assumed would be undertaken. The court finds that the agencies have adequately evaluated the environmental consequences arising out of the changes to the project, and that their decision not to prepare a supplemental EIS is not arbitrary or capricious. Accordingly, plaintiffs have failed to meet their burden of showing a likelihood of success on the merits, or even that there is a fair ground for litigation on the issues they have raised. Plaintiffs' motion for a preliminary injunction is therefore DENIED.

IT IS SO ORDERED.

DATED this 7 day of May, 1996.

BY THE COURT:



TENA CAMPBELL
United States District Judge

ksj

United States District Court
for the
District of Utah
May 7, 1996

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:96-cv-00186

True and correct copies of the attached were mailed by the clerk to the following:

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PROVO RIVER COALITION; THE
STONEFLY SOCIETY OF THE
WASATCH; HIGH COUNTRY
FLYFISHERS, THE UTAH RIVERS
CONSERVATION COUNCIL; ZACHARY
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v.

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MICHAEL G. RITCHIE, Division
Administrator of the Federal
Highway Administration; and
THOMAS R. WARNE, Executive
Director, Utah Department of
Transportation,

Defendants.

**STIPULATION FOR
DISMISSAL**

Case No. 2:96CV 0186C

Judge Tena Campbell

The parties, by and through their respective counsel, stipulate to the dismissal of the above entitled action based upon the agreement of the Utah Department of Transportation ("UDOT") to perform a Supplemental Environmental Impact Statement ("SEIS") on "the Project" as that term is defined in the 1989 Final Supplemental Environmental Impact Statement and the 1990 Record of Decision prior to implementing the next phase of construction .

After the preliminary hearing in this matter, the remaining issues in this action arose from the need for preparation of a supplemental environmental impact statement on the "Project" prior to initiation of the next phase of construction on U.S. Highway 189. Because of the passage of time and for other reasons, the Utah Department of Transportation has committed to create a SEIS before moving forward with any additional phases of the Project. All procedures and requirements of the National Environmental Policy Act 42 U.S.C. 4332 et seq. ("NEPA") and its implementing regulations, as well as all other applicable laws shall be followed.

It is further stipulated that as part of the required NEPA process, a pre-scoping meeting shall be held by defendants with the plaintiffs and any other interested parties to assist in articulating the issues for the purposes of the public scoping process required under NEPA and its implementing regulations.

On that basis it is stipulated that Plaintiffs' Complaint shall be dismissed with prejudice as to the issues finally

adjudicated on the merits in the injunctive proceedings before the Court to enjoin construction efforts under NEPA for the then described Phase II of the Project. All other issues are dismissed without prejudice.

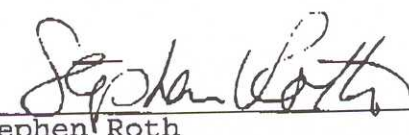
DATED this 19 day of November, 1998.

JAN GRAHAM
Utah Attorney General

By: 
Thomas A. Mitchell
Assistant Attorney General
Attorneys for State Defendant

DATED this 18th day of November, 1998.

PAUL M. WARNER
United States Attorney

By: 
Stephen Roth
Assistant United States Attorney
Attorneys for Federal Defendants

DATED this _____ day of _____, 1998.

APPEL & WARLAUMONT

By: 
Jeffrey W. Appel
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 1998, I caused a true and correct copy of the foregoing Stipulation for Dismissal to be mailed, postage prepaid to the following:

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Becky Jorgensen - Secretary

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U.S. DISTRICT COURT

NOV 20 1998

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PROVO RIVER COALITION; THE
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ORDER FOR DISMISSAL

Case No. 2:96CV 0186C

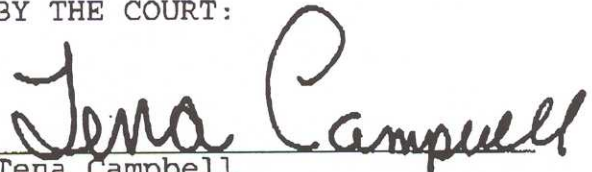
Judge Tena Campbell

Based on the parties' Stipulation and the representations of
the Utah Department of Transportation concerning the Department's
commitment to perform a Supplemental Environmental Impact Statement

under the National Environmental Policy Act ("NEPA") on all further phases of construction for "the Project" as defined in the stipulation (U.S. Highway 189), this Court enters its order dismissing Plaintiffs' Complaint. The Complaint shall be dismissed with prejudice as to the issues finally adjudicated on the merits in the injunctive proceedings before the Court to enjoin construction efforts under NEPA for the then described Phase II of the Project. All other issues are dismissed without prejudice.

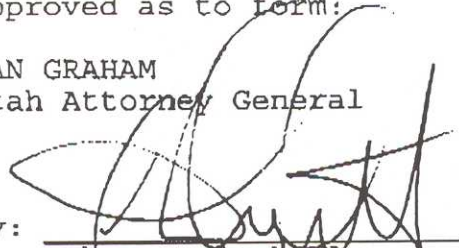
DATED this 20 day of Nov, 1998.

BY THE COURT:


Tena Campbell
U.S. District Court Judge
Attorneys for State Defendant

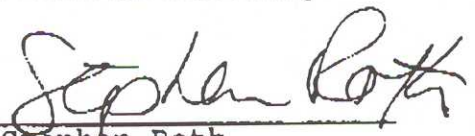
Approved as to form:

JAN GRAHAM
Utah Attorney General

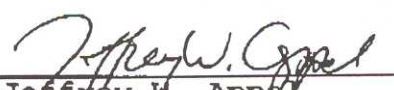
By: 
Thomas Mitchell
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By: 
Jeffrey W. Appel
Attorneys for Plaintiffs

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United States District Court
for the
District of Utah
November 23, 1998

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:96-cv-00186

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